# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CRIMINAL APPLICATION No. 1690 of 2005

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE C.K.BUCH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**VIJAYKUMAR C. MODI - Applicant(s)**

**Versus**

**STATE OF GUJARAT & 1 - Respondent(s)**

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**Appearance :**

MR PANKAJ A KAPADIA for Applicant(s) : 1,
Mr. AY Kogje, Addl. PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2,

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**CORAM : HONOURABLE MR.JUSTICE C.K.BUCH**

**Date : 19/12/2005**

**ORAL JUDGMENT**

1. Heard ld. Counsel Mr. Pankaj Kapadia for the petitioner.

2. Rule. Service of Rule is waived by ld. APP Mr. AY Kogje for respondents. Rule is fixed forthwith.

3(i) Today, ld. Counsel Mr. Kapadia has produced zerox copy of the driving licence of the driver Mansingh issued by the licensing authority at Bikaner which was valid on the date of accident referred to in the petition. That driver of the vehicle involved in the accident was arrested and was enlarged on bail on his furnishing cash surety of Rs.5,000/. Thereafter, he has escaped and is not attending the Court since long. The surety amount at present is lying with the Court which was deposited under Receipt No. RR-256590 issued on 23.06.2003. So, at the most, that amount can be confiscated to the State. It is, therefore, submitted by ld. Counsel Mr. Kapadia that there is no likelihood of termination of the trial of criminal case registered against the driver Mansingh because the driver is not appearing before the Court.

(ii) The vehicle on the date of accident, was insured. So, the interest of the owner of the vehicle i.e. petitioner remained protected so far as the accident referred to in the petition is concerned. So, in the event of any third party claim on behalf of deceased, interest of the heirs and legal representatives of the deceased can be taken care of by the Insurance Company.

4(i) The vehicle at present is with the petitioner and the same has been handed over to him vide order dated

20.06.2003 under section 451 of CrPC on the condition that he shall not sell or otherwise transfer the vehicle. (ii) The prosecution registered against the driver of the vehicle is for the offence punishable under section 304-A of IPC. So, in view of the scheme of IPC and other offences registered against the accused, there is no scope of confiscation of the vehicle. So, ultimately the petitioner on termination of trial, is likely to get the custody of the vehicle under final orders of the Court. The say of the petitioner is that for the reasons mentioned in the application, the petitioner has approached the ld. Trial Judge to modify the condition imposed by the Court while handing over the truck in question to him when interim custody was handed over to him i.e. to the petitioner. The criminal case is pending since 2003. The petitioner at present is a patient of Heart Disease. Truck in question is lying in the godown and value of the same is deteriorating every day. So, by putting some further stringent condition, the petitioner could have been granted permission to sell the truck in question by ld. Judge and the grievance of the present petitioner is that the ld. Judge has not exercised discretion in appropriate way in a given set of special facts and in the background of other facts. So, in view

of the following facts emerging from record, the appropriate relief can be granted by this Court to the petitioner:-

(i) The driver was holding valid licence to drive a transport vehicle even on the date of accident and he was holding valid licence from 04.04.2002 to 08.04.22;

(ii)The driving is not appearing before the Court and the trial is likely to protract for unreasonably long period;

(iii)The driver was enlarged on bail on furnishing cash surety of Rs.5000/. So, in the event of non-appearance, Rs.5000/ can be confiscated to the State.

(iv) There is no scope of confiscation of the vehicle to the State in view of nature of the offence committed.

(v)The owner of the truck himself has approached the Insurance Company to get all damages claimed and,

therefore, the involvement of the vehicle in question in the accident would not be a matter of much dispute and even identity of the vehicle because now the owner himself admits even in the present petition, that the vehicle was found involved in a vehicular accident and he has claimed compensation from the Insurance Company.

(vi) Heirs and legal representatives of the deceased, in the event of filing of any compensation application under MV Act, can ably be taken care of because the interest of the owner is protected qua the vehicle in question. In other words, the vehicle was insured at the relevant point of time.

(vii) The petitioner has voluntarily agreed that wife of the petitioner shall not sell or otherwise transfer one immovable property owned by her which is of much higher value situated in the city of Ahmedabad for a reasonable period i.e. for a period of two years so that the claimant can obtain appropriate order as to the attachment of the said property, if need be.

(viii) That it would not be logical to argue that a person in need of money should be asked to sell his residential house or immovable property owned by his wife for treatment when he otherwise can obtain permission from the Court to sell the vehicle which may fatch some reasonably good amount by way of sale consideration that can be used in medical treatment etc.

5. In view of above set of facts, the Court is inclined to alter the condition imposed by the Court. In exceptional cases, normally the Court should not grant such permission, but it would not be logical or proper on the part of the Court to say that no such alteration should be made in any case even in case of extreme difficulty or as an exception observing that the order as to disposal of muddamal vehicle can be passed only at the end of the trial. To grant permission to dispose of muddamal article is materially different than a disposal of a muddamal article on termination of trial. The question of identity of the vehicle is not involved in the present case and on admission of the owner of the vehicle, the Court is inclined to allow this petition.

6. For the reasons aforesaid, this petition is allowed. The petitioner is now permitted to sell the vehicle in question involved in the accident on conditions, at present lying with him under orders of interim custody. He shall intimate the net amount of sale consideration received by him on sale of the said vehicle, to the ld. Trial Court within 72 hours with a copy of document of sale-agreement. The petitioner shall get/obtain consent and an undertaking from his wife-owner of the immovable property with an affidavit that she shall not sell or otherwise transfer Tenament No. 0518-27-0666-0001-0 situated in the West Zone, Memnagar, Ahmedabad City owned by her till two years from the date of filing of such undertaking and such undertaking and affidavit shall be filed before the trial Court as a condition precedent. Details as to ownership of the tenament owned by the wife of the petitioner are given by ld. Counsel Mr. Kapadia during the course of oral submissions. She will also file an undertaking to the effect that the petitioner will intimate the trial Judge if he or she is able to trace the driver or his location, with a view to help and assist the prosecuting agency to conclude the trial. Undertaking to be filed within 15 days from the date of receipt of writ of this order.

7. With these observations and directions, the petition stands allowed. Rule is made absolute in above terms. The petitioner shall also intimate about passing of this order to the Insurance Company.

D.S. Permitted.

(C.K. BUCH, J)

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